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AVANTOR PERFORMANCE MATERIALS, INC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AVANTOR PERFORMANCE MATERIALS, INC., **Plaintiff,** **-v-** **INTERNATIONAL BUSINESS MACHINES CORPORATION,** **Defendant.**	Civil Action No. **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Avantor Performance Materials, Inc. ("Avantor"), by and through its counsel, Lowenstein Sandler PC and Kasowitz, Benson, Torres & Friedman LLP, by way of Complaint against defendant International Business Machines Corporation ("IBM"), alleges and says:

PRELIMINARY STATEMENT

1. This action arises from the fraud and other misconduct of IBM in misrepresenting the suitability of a software solution to obtain a multi-million dollar contract to upgrade the global computer systems of Avantor, a leading specialty chemicals company.

2. Avantor was created in 2010 as the successor-in-interest to Mallinckrodt Baker, Inc., a company known world-wide for the quality, purity, consistency and reliability of its chemical products, especially those sold under the J.T. Baker® brand name. In 2010, as a critical part of its rebranding and global growth strategy, Avantor decided to convert its information systems to run on a leading enterprise resource planning ("ERP") software known as SAP R/3 ("SAP"), developed by SAP AG and licensed by SAP America, Inc. (the "SAP Companies").

3. Seizing upon Avantor's decision – and fully aware that, given the competitive pressures of Avantor's industry, and the specialized demands of its customers, Avantor could not tolerate any disruptions in customer service – IBM represented that IBM's "Express Life Sciences Solution" (the "Express Solution" or the "System") was uniquely suited to Avantor's business. The Express Solution is a proprietary IBM pre-packaged software solution that runs on an SAP platform.

4. Even though Avantor manufactures and sells more than 3,000 chemical products, IBM insisted, prior to the contract, that Avantor did not need a customized software solution. Instead, after spending weeks learning about Avantor's business processes and functional needs during pre-contract sales presentations and pre-contract due diligence, IBM represented that its Express Solution was appropriate for Avantor. Assuring Avantor that IBM was familiar with and understood Avantor's business, IBM aggressively touted its Express Solution as the best "off-

the-shelf" software solution to run Avantor's core business processes. Based on IBM's representations, Avantor hired IBM to implement the Express Solution (the "Project").

5. Contrary to IBM's pre-contract representations, the Express Solution was woefully unsuited to Avantor's business, and could not provide crucial functionality that Avantor needed to run its core business processes. Indeed, IBM's Express Solution not only failed to provide the very functionality on which Avantor depends for its competitive advantage in the marketplace – namely, its ability to offer customers a vast product portfolio customized to their particular needs – but brought Avantor to a near standstill.

6. In addition to fraudulently inducing its contract with Avantor, IBM thereafter breached that contract by failing to provide qualified personnel to perform the implementation. To the contrary, IBM rewarded Avantor's trust and reliance with a reckless indifference to Avantor's needs, providing Avantor with incompetent and inexperienced consultants who implemented a deficient System that caused severe damage to Avantor's business. IBM's incompetent consultants not only made numerous design, configuration and programming errors, but also failed to properly manage the Project and adequately identify, manage and mitigate Project risks.

7. Throughout the Project, IBM intentionally or recklessly failed to disclose to Avantor critical risks that threatened the implementation. Intent on meeting a projected go-live date, IBM ignored the input of Avantor employees uniquely familiar with Avantor's business processes. For example, IBM disregarded fundamental chemical safety requirements by failing to recognize that basic differences in the chemicals Avantor manufactures or stores require distinct storage protocols. Moreover, to conceal the System's defects and functional gaps, IBM ignored the results of its own pre-go-live tests, conducted inadequate and truncated testing and

instead recommended that Avantor proceed with the go-live as scheduled – even though Avantor had repeatedly emphasized to IBM that meeting a projected go-live date was far less important than having a fully functional System that would not disrupt Avantor's ability to service its customers.

8. Contrary to IBM's repeated assurances that the Express Solution was appropriate for Avantor, the System go-live was a disaster. Among other crippling problems, the System: failed to track or process orders correctly, and lost orders; failed to adjust inventory levels, resulting in inventory inaccuracies; failed to generate paperwork for U.S. Customs; and directed that dangerous chemicals be stored in inappropriate locations.

9. The result of IBM's fraud and other misconduct was a failed software system that was defectively designed, deficiently installed and incapable of operating Avantor's basic business processes. Avantor has sustained tens of million in damages, as well as injury to its brand (JT Baker®), reputation and relationships with its suppliers and customers. IBM, meanwhile, has already pocketed over $13 million in fees from Avantor for a systems implementation project it mismanaged and was unable to perform properly. Incredibly, IBM is now seeking to profit from its misconduct by demanding millions of dollars in additional fees to redesign and rebuild the defective System it implemented.

PARTIES

10. Avantor is a New Jersey corporation with its corporate headquarters in Center Valley, Pennsylvania. Avantor is a global leader in performance materials and chemicals. The products Avantor develops are used by research laboratories and pharmaceutical, biopharmaceutical and electronics companies to further enhance and drive their products. Within the United States, Avantor has manufacturing, research and warehouse facilities in Phillipsburg, New Jersey (the "Phillipsburg Facility") and manufacturing and warehouse

facilities in Paris, Kentucky (the "Paris Facility"). The principal events in this dispute occurred at those facilities, as well as at Avantor's former Phillipsburg, New Jersey, offices.

11. Upon information and belief, IBM is a public corporation with its principal place of business in Armonk, New York. IBM is engaged in the business of, among other things, providing computer hardware, software and software implementation services to companies around the world. IBM is a New York corporation, licensed to do business in New Jersey.

JURISDICTION AND VENUE

12. Jurisdiction of this Court is founded upon 28 U.S.C. § 1332(a)(1). This matter involves citizens of different states, and the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs.

13. Venue is proper within this Judicial District under 28 U.S.C. § 1391(a) and (c). Defendant IBM is subject to *in personam* jurisdiction in New Jersey, as a substantial part of the events, representations, and/or omissions giving rise to the claims occurred within the District of New Jersey.

FACTUAL BACKGROUND

A. Avantor's Business and the Decision to Implement the System

14. Avantor produces and globally distributes, among other things, chemicals and raw materials for pharmaceutical products, laboratory chemicals and chemicals used in the electronics industry. These products are manufactured domestically at the Phillipsburg and Paris Facilities. Avantor is licensed by the United States Food and Drug Administration ("FDA") with respect to pharmaceutical materials, and is therefore subject to strict regulations. Some of the materials that Avantor handles are hazardous chemicals, such as sulfuric acid, subject to strict storage requirements.

15. Drawing on over a century of chemicals manufacturing, innovation and leadership, Avantor has a well-established reputation for quality products and reliable customer service. The Avantor name was created in 2010 as part of a rebranding strategy intended to build upon the reputation of Avantor's predecessor company, Mallinckrodt Baker, Inc. and the JT Baker® brand name, and enhance that reputation by maximizing efficiencies and customer satisfaction while increasing its global footprint to better serve its global customers.

16. Over the years, as competition in its industry has increased, Avantor has sought to differentiate itself by expanding its product lines and being uniquely responsive to its customers' demands for high quality, purity, consistency and reliability across a broad offering of customized products, packaging and delivery channels. Offering more than 3,000 specialized products, Avantor has achieved steady growth by providing its customers with an extremely variegated product line. To take its growth to the next level, Avantor also wanted to expand globally through mergers and acquisitions.

17. One of the cornerstones of Avantor's growth strategy was to replace its legacy information systems with a global roll-out of SAP, beginning with its U.S. facilities. SAP, a leading ERP platform, is an integrated software system that is supposed to link a company's business processes globally in a real-time environment. A properly implemented SAP system should allow a company to, among other things, track inventory; optimize the storage and flow of materials from the warehouse to the customer; and automate financial and management accounting, supply-chain management, and invoicing and payment processing.

B. IBM's Campaign to Be Hired for the Project by Misrepresenting the Express Solution

18. Because Avantor had no experience with SAP implementations, it needed to hire an expert integrator to perform this complex project. Avantor approached IBM, which consistently holds itself out as a "premier" SAP implementation firm.

19. From the outset of its pre-contract interactions with IBM and throughout the sales cycle and pre-contract due diligence, beginning in or around January 2011 and culminating in agreements between the parties on March 31, 2011, Avantor emphasized three primary concerns. Specifically, at formal IBM sales presentations, at informal meetings and on phone conversations, Avantor advised IBM that:

(a) Avantor employees had virtually no experience with SAP implementations, lacked the knowledge or experience necessary to perform such a project by themselves and therefore would be relying on IBM's expertise, experience, advice, and guidance on even the most basic SAP issues.

(b) Avantor could neither afford nor tolerate an SAP roll-out that would negatively impact customer service and relations. Avantor instructed IBM that the focus of the Project had to be on obtaining a fully-functional SAP system capable of meeting Avantor's business requirements, rather than on meeting a projected go-live date.

(c) The core of Avantor's business model was an extremely variegated product line, which featured not merely thousands of products but a vast array of quality, quantity, packaging and shipping options tailored, in many cases, to customers' specific needs. Avantor also emphasized that many of its products are regulated, creating a host of additional complexities that the System needed to address. As a result, Avantor stressed that it needed a highly flexible solution that could be appropriately configured to provide the requisite functionality to meet its customers' particularized demands and unique handling requirements.

20. IBM's response throughout the pre-contract sales cycle was to represent that it understood each of these concerns and to tout the suitability of its Express Solution for Avantor's business. During February and March 2011, IBM conducted pre-contract due diligence "workshops" at Avantor's Phillipsburg, New Jersey offices, meeting with dozens of Avantor employees for hundreds of hours to specifically address the details of Avantor's core business processes. During these and other pre-contract sessions with Avantor, IBM employees, led by Al Opher, IBM's Global Industrial SAP Leader, evaluated Avantor's core business requirements and functional needs by immersing themselves in, among other things, Avantor's product portfolio (which includes thousands of SKUs, or stock keeping units); manufacturing processes; supply chain; marketing practices; financial systems and packaging options (including materials and sizes); and raw material storage, production and end product storage requirements. Throughout, IBM represented that its Express Solution was a uniquely flexible software solution that could be configured to provide Avantor with the functionality it required for its core business processes.

21. For example, during a series of formal IBM presentations held at Avantor's Phillipsburg offices, including presentations held on February 11, February 18 and February 21, 2011, Opher and other IBM personnel touted the suitability of the Express Solution for Avantor's business. When Robert Harrer, Avantor's Chief Financial Officer and Chief Administrative Officer, raised concerns about whether IBM's off-the-shelf Express Solution would be able to handle the complexity of Avantor's business, Opher assured him that the

Express Solution could be easily configured to address the variegated nature of Avantor's product offerings and business processes.

22. At these presentations, Opher and his IBM colleagues repeatedly assured Avantor that the Express Solution was an "off-the-shelf" software solution not only appropriate for Avantor's business, but also the optimal tool to ensure a successful implementation. At one meeting, on February 18, 2011, IBM distributed a PowerPoint document representing that its pre-packaged Express Solution contained functionality capable of meeting Avantor's core business processes, including, among other things, sales order management, accounting, manufacturing, procurement and logistics.

23. Because it was imperative that Avantor's SAP implementation would deliver the functionality, scalability and performance necessary to run and grow its business, Avantor, throughout the pre-contract sales cycle, continued to press IBM about the suitability of the Express Solution. In follow-up conversations to the formal presentations, Opher reiterated IBM's assurances to Harrer, insisting that the Express Solution was the right solution for Avantor. Opher advised Avantor that he appreciated Harrer's concerns, but assured him that the insight into Avantor's business that IBM was obtaining through the employee workshops and other due diligence only confirmed for IBM that the Express Solution was uniquely well-suited to Avantor's business processes.

24. In all, IBM conducted approximately ten separate workshops focused on Avantor's core business processes; conducted interviews with approximately 15 Avantor managers and executives; and had discussions with dozens of Avantor employees concerning Avantor's functional requirements, business processes, strategic plan and SAP implementation objectives. Throughout these workshops and the follow-up meetings – and at all of IBM's

formal presentations – whenever Avantor raised issues about whether the off-the-shelf Express Solution was suited to its business processes, IBM assured Avantor that (i) IBM understood Avantor's business, and (ii) determined, with no reservations, that the Express Solution was the appropriate platform. When Avantor questioned IBM about whether Avantor needed a customized solution in light of its functional requirements, Opher and his IBM colleagues assured Avantor that a customized solution was not necessary. Instead, according to Opher and other IBM officials, the Express Solution was an "off-the-shelf," "pre-packaged" solution that IBM could easily "tweak" through "configuration changes" to fill any functional gaps.

25. In fact, as IBM knew or should have known, its pre-contract representations concerning the suitability of the Express Solution for Avantor's business were false. The off-the-shelf Express Solution was decidedly ill-suited for Avantor's business.

26. Avantor relied on IBM's purported knowledge, skill, and experience concerning SAP in general and the chemicals industry in particular, and accepted IBM's rationale and recommendation to use the Express Solution. Accordingly, on or about March 31, 2011, in good-faith reliance on IBM's representations and expertise, Avantor formally engaged IBM to implement the System by signing two contracts: the Customer Agreement, which outlined the general terms of the parties' agreement, and the Statement of Work ("SOW 1"), which described the specific work that IBM contracted to perform for Avantor, including implementation of the Express Solution.

27. Pursuant to these two contracts, Avantor contracted to pay an estimated $13,608,180.00 for an estimated 128,245 hours of IBM's time to develop a working and fully functional global System that would meet Avantor's needs on a global basis.

28. On or about November 11, 2011, the parties entered into a Project Change Request ("PCR") that increased the fees payable to IBM to $16,243,285 and increased IBM's allowable hours to 147,139.

29. In the Customer Agreement, IBM explicitly agreed that it "will "assign personnel that are qualified to perform the tasks required . . ." (Section 5.1), and expressly warranted that it would use "reasonable care and skill." Section 2.1.3.

C. The Problems with the Express Solution and IBM's Performance

30. Avantor depended upon IBM to design the System; scope the Project (during a "blueprinting" phase); evaluate the adequacy of the design; configure the System; program the System; design the appropriate pre-go-live testing of the System; test the System and evaluate the adequacy of the testing; identify, manage and mitigate risks on the Project; and assist in training Avantor's key employees on the new System. Above all, Avantor depended upon IBM to (i) deliver a System that would not adversely impact its business and customers; (ii) advise Avantor whether and when the System was in fact ready to go live; and (iii) identify, manage, mitigate and advise Avantor of any go-live risks (given that, once the System went live, it was not practicable for Avantor to revert to its legacy systems).

31. After the parties signed the two agreements, the Project began with Wave One, which involved the implementation of the System to run Avantor's United States business. The implementation of the System to run Avantor's Asian, Mexican and European facilities was slated for Wave Two, and possibly Wave Three.

32. Shortly after the Project began, Avantor raised concerns that the Express Solution might require extensive customization to run Avantor's business, with its numerous regulated products and extensive product lines. At a series of "Strategic Alignment" meetings, held on or about April 26-28, 2011, IBM assured Avantor that simple "work-arounds" would deliver the

necessary functionality. During these meetings, IBM continued to tout the Express Solution as an "off-the-shelf" and "plug-and-play" solution appropriate for Avantor's business. At these meetings, Opher told Avantor's executives, "We know your business. We know Life Sciences."

33. Following these meetings, Avantor Project team leads compiled a comprehensive list of issues they were encountering and functional gaps that needed to be addressed. The team leads were specifically asked to categorize each item as "high, medium, or low" priority. When presented with the categorized list of issues, IBM pushed back aggressively on items that were not contained in the pre-packaged System, regardless of business need. IBM rejected the "medium" and "low" issues out of hand and, for all "high priority" issues, IBM advised for the first time that, contrary to its pre-contract representations, filling such functional gaps would require extensive development work and modifications.

34. Throughout this process, IBM focused far more on a projected go-live date and an estimated budget – in order to collect its fees and move onto the next project – than on delivering the kind of SAP system it knew Avantor required: an operational system fully capable of meeting Avantor's functional requirements that, once live, would not interrupt customer service or impact Avantor's relations with its customers. Rather than devote the time and effort necessary to remedy the problems that surfaced during the implementation, IBM instead represented to Avantor that these shortcomings could be fixed with temporary work-arounds. Instead of working on permanent integrated solutions, IBM opted for the kinds of work-arounds, "band aids" and manual processes that undermined the very purpose of an SAP implementation.

35. Additionally, as each phase or process was completed, IBM ignored required testing protocols. Even though IBM's normal testing protocols required three complete end-to-

end testing cycles of each process, IBM insisted that it was sufficient to test in screenshots with limited data sets, and that any shortcomings could be addressed by work-arounds.

36. Even worse than IBM's severely truncated testing was IBM's conduct in deliberate "under-testing." To ensure artificially positive results – that is, to ensure that the tests would pass, and thereby conceal the System's defects – IBM had Avantor personnel create test scripts using limited data sets, or test hypothetical "base-case scenarios" rather than more complex production-level scenarios. When a test failed, meanwhile, IBM simply moved on, falsely assuring Avantor that the problems could be fixed later. This only rolled System problems from one stage of the Project to the next – an approach that, in light of the iterative nature of the implementation, created even more problems, many of which IBM ignored or never addressed.

37. IBM failed to plan for and address the complexities of migrating data from Avantor's legacy systems to the new System. This led to data inaccuracy that further exacerbated the testing deficiencies, as substantial volumes of transactions and interfaces could not be tested at all.

38. IBM also failed to provide Avantor with proper training materials as required under SOW 1. Lacking SAP experience, Avantor personnel relied on IBM to provide accurate and comprehensive training materials so that Avantor could learn how to use the new System and adequately train its own employees. Yet IBM's training materials were woefully insufficient, consisting largely of two- to three-page hand-outs that provided only superficial, cursory introductions to the System that IBM installed. Such materials made it impossible for Avantor to conduct the necessary training. In addition, because it was striving to meet the scheduled go-live date, IBM severely curtailed training sessions.

39. As the project progressed, it became clear that essential functionality was missing from the System. For example, IBM failed to address such basic issues as bar code scanning and warehouse inventory controls, keg and bin sizing, the proper handling of dangerous goods, certain manufacturing processes, pick and pack, shipping documentation, and other crucial issues.

40. On those occasions when Avantor informed IBM personnel of such deficiencies, IBM's response was to push ahead with work-arounds and inadequate testing, even though IBM knew that the System was riddled with defects and functional gaps that would pose a severe risk to Avantor's business after go-live. IBM nevertheless emphatically urged Avantor to go live on the scheduled date.

D. IBM Urges Avantor to Go Live in the Face of Severe Risks

41. Frustrated with IBM's failure to address critical functional gaps and other issues, even those designated "high priority," Avantor team leads began to raise their concerns with Harrer, Avantor's CFO, during meetings that began in or about September 2011. When Harrer raised the need to postpone the go-live, then scheduled for February 1, 2012, IBM pushed back aggressively, insisting that the Project was on track. In response, Harrer overruled IBM and postponed the go-live date for 60 days. Even with this two-month delay, IBM was still unable to resolve critical issues, requiring Harrer to postpone the go-live for another 30 days. IBM did not agree with either of these decisions to delay the go-live date, insisting that there were no red flags or go-live risks that would justify even a slight adjustment of the timetable.

42. On or about December 22, 2011, a second Statement of Work, concerning Application Maintenance Services ("SOW 2"), was entered into between IBM and Avantor. Pursuant to SOW 2, IBM was to provide certain support and maintenance services post go-live.

43. In or about February 2012, IBM senior executive Manish Chawla attended an Avantor management meeting to discuss the SAP implementation. At that meeting, Raj Gupta, Avantor's Chairman of the Board and, at that time, Chief Executive Officer, stated that it was imperative that migration to the new System not disrupt Avantor's relations with its customers, or negatively impact Avantor's ability to service its customers. Harrer requested that IBM identify problems that might occur and how to avoid them.

44. On or about April 18, 2012 IBM senior executive David Meek and Chawla made a presentation before the Project Steering Committee. At that meeting, in response to questions from Avantor executives about whether Avantor should go live with the System, Meek and Chawla unequivocally responded yes. Indeed, Meek and Chawla assured the Steering Committee that the testing of the System was not only complete, but indicated that the System was ready to go live.

45. More specifically, Meek and Chawla gave a PowerPoint presentation at that Project Steering Committee meeting concerning the status of the Project. Titled "Confirming our readiness for Go-Live on April 30th," the presentation contained a color-coded section to indicate the state of readiness of each System component, and how each might affect the go-live. A green designation was defined as "completed or in process with no expected issues"; yellow was defined as "minor issue encountered"; red was defined as "potential showstopper issues encountered"; and blue was defined as "planned activity with no expected issue." Of the 32 categories addressed in the presentation, 27 were designated green, four were designated yellow, and only one was designated blue. Not a single category was designated red, meaning that IBM had identified no "showstoppers" to warrant further delaying the go-live.

46. Relying upon IBM's representations at the meeting and in the PowerPoint presentation, Avantor accepted IBM's recommendation to go live on April 30, 2012, given that, as IBM stated, the only remaining issues were minor, so that the go-live would proceed with few if any problems.

47. On April 25, 2012, Meek and Chawla again appeared before the Project Steering Committee and repeated the representations they previously made on April 18, 2012. They re-affirmed their recommendation to go live immediately.

48. Prior to and at these Project Steering Committee meetings, Avantor executives repeatedly: (a) advised IBM that they wanted the go-live to be delayed if the System was not ready, lest post-go-live problems with the System disrupt customer service or Avantor's relations with its customers; and (b) reiterated that Avantor was willing to further adjust the schedule in order to avoid any such disruptions. Despite those admonitions, IBM affirmed that the System was ready to be rolled out, and urged Avantor to proceed with the go-live.

E. The Disruptions to Avantor's Business Caused by System Defects Following Go-Live

49. On May 2, 2012, Avantor shut down its legacy systems and switched over to IBM's Express Solution. The new System officially went "live."

50. Immediately upon go-live, massive System failures began to cripple Avantor's business. Defects in the System that IBM implemented caused severe planning, order management, logistics and warehouse problems that brought Avantor's business to a virtual halt.

51. For example, IBM's failure to properly map the logic of various warehouses led to inaccurate inventory, picking issues and unreliable shipping schedules. The defective System further directed Avantor personnel to store flammable products next to oxidizers in the Paris Facility – an obvious and significant fire hazard. But for Avantor employees' actions in ignoring

the System's erroneous and dangerous directive, a catastrophic event could have occurred. Similarly, the System directed that flammable products be stored in areas without sprinklers – another obvious fire hazard.

52. Moreover, Avantor and IBM had previously met on several occasions with one of Avantor's largest customers, who expressed a concern that its EDI interface with Avantor – through which it electronically orders products from Avantor, and tracks those orders – would not work upon System go-live. At the meeting, IBM assured this customer that its EDI interface would indeed work upon go-live. In fact, the EDI interface immediately failed upon go-live.

53. Another crucial defect in the System IBM implemented concerned special requests by Avantor customers. Under IBM's standard configuration of the Express Solution, all chemicals, regardless of their unique characteristics and statutory and regulatory requirements, are treated equally in the System with respect to storage, inventory and order processing. IBM's defective System design therefore made special requests by customers – a key component of Avantor's business model, as Avantor repeatedly advised – nearly impossible to handle.

54. Other defects in the System that injured Avantor's business after go-live included, among other things: (i) the System was not mapped properly to Avantor's export document software, which prevented Avantor from making any export shipments for five weeks after the go-live; (ii) shipments were not properly processed, leading to improper and inaccurate billing; and (iii) the System did not provide reliable transaction processing or data in connection with promise dates, products shipped, and billings. To address these and numerous other problems, Avantor employees were forced to perform time-consuming tasks, such as billing and placing shipments, by hand.

55. By May 6, 2012, the defects in the System implemented by IBM brought Avantor's shipping to a near standstill. Yet because IBM falsely assured Avantor that it was experiencing only typical post-go-live "glitches" – normal interruptions that would quickly be resolved – Avantor did not immediately realize the severity of the problems. Moreover, because the System could not effectively track and report data regarding orders or distribution, Avantor had to learn about some of these problems directly from its customers who did not receive orders, or from employees who could not perform certain of their job functions.

56. Approximately three weeks after the System went live, the parties met at the Sands Hotel in Bethlehem, Pennsylvania to discuss Wave Two of the Project, involving Avantor's international operations. Shortly after the meeting started, Avantor management began to realize the full extent of the System-related problems and the devastating impact to its business and, in response, terminated the meeting, recalled its employees and postponed the implementation of Wave Two.

57. Prior to this scheduled meeting at the Sands, IBM did not raise any red flags that the System was not working properly, or flag any issues stemming from the go-live.

58. Ultimately, during May 2012, Avantor learned that shipments had dropped approximately 75%. Starting on or about June 11, 2012, Avantor began working three shifts at the Paris Facility in a desperate attempt to get production and shipping back, or close, to pre-go-live levels, and Avantor took numerous other steps to keep its business functioning and to fill customer orders and deliver products. Even now, Avantor's business has still not fully recovered, as manual processes for critical functions remain in place, and shipping, documentation, and production planning problems continue to interfere with customer service and hamper productivity.

F. IBM's Reaction to the Disastrous Go-Live

59. In or about June 2012, Avantor CEO Gupta contacted an IBM senior executive to discuss the catastrophic SAP problems. After this conversation, IBM, for the first time, began to acknowledge the severity of the situation.

60. IBM replaced many of its personnel from the initial roll-out team, sending in a new team of consultants to analyze the System's problems. As more problems were identified, IBM brought increasing numbers of consultants on board, at times exceeding 50. Among other changes, the new IBM consultants engaged in significant re-design and re-programming work, modified the pick and pack processes at the Paris Facility, modified the procedures for exporting products and replaced the inadequate SAP training materials with more detailed materials.

61. In or about July 2012, IBM told Avantor to cancel every pending order and reset the entire System in light of pervasive warehouse problems. IBM said this was necessary to discover the root cause of the problem.

62. Ultimately, IBM acknowledged that it had to engage in extensive remedial efforts to redesign and rebuild the System that Avantor hired it to deliver. IBM now seeks to pocket millions of dollars in additional fees by charging Avantor for the remedial work required by IBM's own admittedly grossly inadequate work on the Project.

63. Notably, numerous IBM personnel have admitted to Avantor personnel that, among many mistakes, IBM failed to properly manage the Project and use SAP best practices. In fact, consultants from the new IBM team have acknowledged that the initial IBM personnel assigned to the Project were not sufficiently skilled and experienced. At least two IBM employees have admitted to Avantor that IBM initially provided the "C Team" for the implementation, and that the Express Solution was in fact not the correct solution for Avantor's business needs. Other IBM personnel have lamented to Avantor employees that "they could not

believe IBM got Avantor into this mess," that IBM's performance was "appalling," and that this was the "worst [SAP implementation] we've ever seen."

64. Contrary to its contractual obligations, the consultants IBM provided during the Project were incompetent and unskilled, and lacked the necessary experience and expertise in SAP, project management, and risk identification and mitigation. In its work on the Project, IBM breached its contractual obligation to "assign personnel that are qualified to perform the tasks required," and its express warranty to use "reasonable care and skill," by failing to:

(a) undertake only those projects that it could reasonably have expected to complete with professional competence;

(b) exercise due professional care in the performance of its services, including its recommendations, representations and advice to its client, Avantor;

(c) adequately plan and supervise the performance of its work on the Project;

(d) assign appropriately skilled, qualified and experienced persons to work on the Project;

(e) obtain sufficient relevant data from its client, Avantor, and relevant third parties to afford a reasonable basis for conclusions and recommendations; and

(f) adequately identify, disclose, manage and mitigate risks that it knew or should have known were occurring on the Project.

65. Concerning (e) above, IBM knew that the Project had certain unique risks in light of, among other things, Avantor's complex functional and business process needs. In its role as System integrator, IBM was both (i) required to take steps to alert Avantor to Project risks and to adequately and appropriately manage and mitigate them; and (ii) uniquely qualified to anticipate and address risks on the Project.

66. At various times during its performance on the Project, IBM knew, or should have known, about critical risks that threatened to jeopardize and undermine the Project, and that required the provision of skilled resources, a readjustment in the implementation timetable or a reconsideration of whether the Express Solution was appropriate for Avantor's business. IBM had a duty to disclose such risks to Avantor, yet failed to do so.

67. For example, IBM (i) knew about, or should have known about, the following risks; (ii) should have, but did not, alert Avantor's executive management to such risks; and (iii) should have, but did not, take steps to manage and mitigate such risks:

(a) IBM failed to adequately and appropriately disclose to Avantor, during the pre-contract stage or at any time during the Project, that IBM's Express Solution was not suited to Avantor's business, and was in fact an inappropriate solution for Avantor that required extensive customization, core modifications and development work to address significant functional gaps;

(b) IBM failed to adequately and appropriately disclose to Avantor, during the pre-contract stage or at any time during the Project, that IBM did not have the ability or intention to provide Avantor with consultants with the necessary skills, experience and expertise, in the design, testing and project management areas, among others, necessary to perform the SAP implementation for Avantor;

(c) IBM failed to adequately and appropriately disclose to Avantor that the blueprinting process for the System it was implementing was not adequate;

(d) IBM failed to adequately and appropriately disclose to Avantor that the System it was implementing had not been adequately tested;

(e) IBM failed to adequately and appropriately disclose to Avantor that the test data and test scripts it was using to test the System were not valid or reliable indicators of the System's performance in production; and

(f) IBM failed to adequately and appropriately disclose to Avantor that IBM would not be able to properly design, configure and test the System to meet Avantor's functional requirements.

68. Notwithstanding IBM's duty and obligation to disclose risks on the Project, its lead Project managers pursued a "no red-flag" approach, meaning that no issue would be flagged as so severe as to warrant any delay in the timetable. Adhering to this strategy, IBM not only remained silent in the face of severe risks, but in fact affirmatively discounted, minimized and concealed the significance of critical risks in its communications with Avantor's management.

69. Thus, despite the fact that it knew, or should have known, that the SAP System was not ready to be rolled out on the go-live date, IBM concealed that fact from Avantor and recommended that Avantor go live as scheduled. Had IBM advised Avantor of the need to further delay the go-live because of the risk that the System would not be able to meet Avantor's functional requirements or transaction volumes, or that its flawed design and configuration could result in inventory discrepancies and missed and inaccurate shipments, Avantor would have again delayed the go-live until such problems were adequately resolved. IBM withheld such information from Avantor to further its own interests in meeting Project timelines and continuing to collect fees from Avantor, at great expense and damage to Avantor.

70. The damages caused by the failed SAP implementation have been dramatic. For one client, Avantor has incurred over $380,000 in Federal Express charges alone to make up for

delays in product shipments. Other Avantor clients have begun to seek secondary sources of supply out of frustration over Avantor's delays in meeting their orders, as well as Avantor's inability to provide "promise" dates. As a result, Avantor will suffer from an inevitable decrease in margins and additional lost business. Indeed, some customers have already canceled their contracts with Avantor.

71. As a direct result of IBM's misconduct, Avantor has suffered tens of millions of dollars in direct, indirect and other damages, including freight shipping, temporary staffing, employing third-shift employees, overtime, expedited air freight, engaging non-IBM consultants, lost business, cancellation of orders and a diminution of reputation and goodwill.

COUNT I
FRAUDULENT MISREPRESENTATION AND CONCEALMENT

72. Avantor repeats, realleges and incorporates each of the allegations contained above as if fully set forth herein.

73. As set forth above, IBM made misrepresentations of material facts, and failed to disclose material facts, to Avantor regarding the suitability of IBM's Express Solution product for Avantor's business, including Express Solution's purported ability to meet Avantor's functional needs and business requirements and run Avantor's business processes.

74. Such misrepresentations by IBM were made in order to induce Avantor to enter into the Customer Agreement, SOW 1, the PCR, and SOW 2 (collectively, the "Contracts"). Avantor reasonably relied upon such misrepresentations made by IBM in entering into the Contracts.

75. As a result of IBM's fraud and deceit, Avantor has been damaged, and continues to be damaged.

76. In addition, because IBM's actions were committed knowingly, willfully and in conscious disregard of the rights of Avantor, Avantor is entitled to recover punitive damages in an amount to be determined at trial.

WHEREFORE, Avantor demands judgment against IBM, on the First Count of the Complaint, for:

(a) direct damages in an amount to be determined at trial;

(b) indirect damages in an amount to be determined at trial;

(c) punitive and/or exemplary damages in an amount to be determined at trial;

(d) pre-judgment interest;

(e) post-judgment interest;

(f) court costs incurred by Avantor in prosecuting this action; and

(g) such other and further relief that the Court deems just.

COUNT II
WILLFUL MISCONDUCT

77. Avantor repeats, realleges and incorporates each of the allegations contained above as if fully set forth herein.

78. Avantor repeatedly advised IBM that Avantor was relying on IBM to implement a fully-functioning System, as Avantor personnel had virtually no knowledge regarding SAP implementations.

79. The nature of this relationship between Avantor and IBM was one of trust and confidence, as IBM was in a superior position and possessed special knowledge.

80. Avantor relied upon IBM to perform its duties in utmost good faith.

81. IBM knew that the failure to perform its duties could lead to the catastrophic failure of Avantor's business.

82. Instead of performing its duties as required, IBM intentionally: misrepresented the suitability of the Express Solution for Avantor's business; concealed the limitations and deficiencies of the Express Solution for Avantor's business; ignored and concealed Project risks, and otherwise failed to adequately manage and mitigate risks; failed to perform adequate and appropriate testing of the System, and engaged in deliberate under-testing to procure artificially positive results to conceal System defects and convince Avantor that the System was ready to go-live; failed to properly staff the Project, and provided Avantor with consultants whom IBM knew, or should have known, were incompetent and inexperienced; pushed forward with the Project, pursuant to a "no red flags" strategy, despite its awareness of System defects, functional gaps and the unsuitability of the Express Solution for Avantor's business; misled Avantor regarding the readiness of the System; and failed to provide Avantor with proper training materials.

83. IBM had a duty to disclose to Avantor that the Express Solution was not suited to Avantor's business, and that the System was not ready to go live on the scheduled go-live date. IBM violated this duty by persuading Avantor to go live, even though IBM knew, or should have known, that the System was not ready to go live, and that going live would likely cause damage to Avantor's business.

84. Had IBM had exercised even slight care or due diligence, IBM would have remedied the System-related problems before the go-live, or would have delayed the go-live to ensure that these problems were resolved.

85. IBM intentionally ignored and concealed Project risks, and made intentional misrepresentations to Avantor, including Avantor management. IBM knew that a failure to perform its duties properly would result in severe damages to, and even the destruction of, Avantor's business.

86. Notwithstanding these factors, IBM persuaded Avantor to go live by falsely assuring Avantor that the System was ready to go live, even though IBM knew, or should have known, at that time that the System was not ready to go live.

87. It was foreseeable to IBM, and indeed IBM knew, that pushing forward with the SAP implementation at that time would cause Avantor severe injury and damage to its business.

88. As a result of IBM's willful misconduct, Avantor has been damaged, and continues to be damaged.

89. In addition, because IBM's actions were committed knowingly, willfully and in conscious disregard of the rights of Avantor, Avantor is entitled to recover punitive damages in an amount to be determined at trial.

WHEREFORE, Avantor demands judgment against IBM, on the Second Count of the Complaint, for:

(a) direct damages in an amount to be determined at trial;

(b) indirect damages in an amount to be determined at trial;

(c) punitive and/or exemplary damages in an amount to be determined at trial;

(d) pre-judgment interest;

(e) post-judgment interest;

(f) court costs incurred by Avantor in prosecuting this action; and

(g) such other and further relief that the Court deems just.

COUNT III
GROSS NEGLIGENCE

90. Avantor repeats, realleges and incorporates each of the allegations contained above as if fully set forth herein.

91. Avantor repeatedly advised IBM that Avantor was relying on IBM to implement a fully-functioning System, as Avantor personnel had no knowledge regarding SAP implementations.

92. The nature of this relationship between Avantor and IBM was one of trust and confidence, as IBM was in a superior position and possessed special knowledge.

93. Avantor relied upon IBM to perform its duties in utmost good faith.

94. IBM knew that the failure to perform its duties in the utmost good faith could lead to the catastrophic failure of Avantor's business.

95. Instead of performing its duties in good faith, IBM ignored problematic data, refused to perform basic testing of the System in accordance with the Contracts and its own protocols, cavalierly disregarded its obligations to provide Avantor with proper training materials in full knowledge that Avantor lacked any experience with SAP implementations, recklessly pushed forward with the Project despite failures in the System's blueprinting and testing, designed a System that allowed for flammable and incendiary materials to be stored next to each other in reckless disregard for the safety of Avantor's employees and others, made false and reckless statements to the Project Steering Committee at the April 18, 2012 meeting regarding the readiness of the System to go live, and showed a reckless indifference to Avantor's specific needs and business.

96. If IBM had exercised even a minimal level of care and expertise, IBM would have rectified the problems before the System went live or would have delayed the go-live until it had fixed such problems.

97. Instead, IBM ignored key indicators, made misrepresentations to the Steering Committee, and failed to raise any "red flags" that the System would fail upon launch and not be able to meet Avantor's business needs.

98. IBM's statements and performance rose to the level of reckless indifference and disregard for Avantor's rights and the safety of Avantor and others.

99. Notwithstanding these factors, IBM persuaded the Project Steering Committee to go live with knowingly false assurances that the System was properly implemented. In its position as the world's self-proclaimed leading expert in SAP implementations, and in its role as Avantor's integrator on the Project, there was no excuse for IBM's failure to warn Avantor that the System was not ready to go live, especially in light of (i) the two previous delays unilaterally insisted upon by Avantor, against the wishes of IBM; (ii) Avantor's repeated admonitions that it could not tolerate disruptions to customer service or its relations with its customers; and (iii) the failure of the System as soon as it went live.

100. As a result of IBM's gross negligence, Avantor has been damaged, and continues to be damaged.

101. In addition, because IBM's negligent acts were committed in conscious disregard of the rights of Avantor, Avantor is entitled to recover punitive damages in an amount to be determined at trial.

WHEREFORE, Avantor demands judgment against IBM, on the Third Count of the Complaint, for:

(a) direct damages in an amount to be determined at trial;

(b) indirect damages in an amount to be determined at trial;

(c) punitive and/or exemplary damages in an amount to be determined at trial;

(d) pre-judgment interest;

(e) post-judgment interest;

(f) court costs incurred by Avantor in prosecuting this action; and

(g) such other and further relief that the Court deems just.

COUNT IV
BREACH OF CONTRACT

102. Avantor repeats, realleges and incorporates each of the allegations contained above as if fully set forth herein.

103. Avantor and IBM entered into and are parties to the Contracts.

104. Avantor fulfilled its obligations under the terms of the Contracts.

105. As outlined in detail in the Contracts, IBM agreed and was obligated to provide Avantor with a fully-functioning System capable of meeting Avantor's business requirements.

106. As described in detail above, IBM failed to perform its responsibilities and obligations set forth in the Contracts, and failed to provide a fully-functioning SAP System in accordance with the specifications outlined in the Contracts.

107. For example, IBM has breached, without limitation, §§ 2.1.3 and 5.1 of the Customer Agreement and §1.4 of SOW 1.

108. As a result of IBM's misconduct, errors and failures, IBM breached the Contracts by providing a defective and deficient System that failed to perform as promised after the go-live.

109. IBM's breaches were material to the Contracts and not incidental in nature.

110. As a result of IBM's breaches, Avantor has been damaged, and continues to be damaged.

WHEREFORE, Avantor demands judgment against IBM, on the Fourth Count of the Complaint, for:

(a) direct damages in an amount to be determined at trial;

(b) indirect damages in an amount to be determined at trial;

(c) pre-judgment interest;

(d) post-judgment interest;

(e) court costs incurred by Avantor in prosecuting this action; and

(f) such other and further relief that the Court deems just.

COUNT V
BREACH OF EXPRESS AND IMPLIED WARRANTY

111. Avantor repeats, realleges and incorporates each of the allegations contained above as if fully set forth herein.

112. IBM agreed pursuant to an express warranty in the IBM Customer Agreement that it would perform its services "using reasonable care and skill."

113. IBM also provided various express and implied warranties in the Contracts as to the quality, performance, cost, design, integration, "Machines," "Programs" and "Services" it had contracted to provide Avantor.

114. IBM breached its express and implied warranties to Avantor.

115. IBM's breaches were material and not incidental in nature.

116. As a result of IBM's breaches, Avantor has been damaged, and continues to be damaged.

WHEREFORE, Avantor demands judgment against IBM, on the Fifth Count of the Complaint, for:

(a) direct damages in an amount to be determined at trial;

(b) indirect damages in an amount to be determined at trial;

(c) pre-judgment interest;

(d) post-judgment interest;

(e) court costs incurred by Avantor in prosecuting this action; and

(f) such other and further relief that the Court deems just.

COUNT VI
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

117. Avantor repeats, realleges and incorporates each of the allegations contained above as if fully set forth herein.

118. Every contract, including the Contracts, imposes a duty of good faith and fair dealing in its performance. The covenant embraces a pledge that neither party shall do anything that destroys or injures the right of another party to receive the benefits of the contract or frustrates the basic purpose of the contract.

119. IBM failed to perform the Contracts in good faith by, among the other failures set forth above, advocating that Avantor go live with the System, despite its knowledge that the System was not ready to go live.

120. The actions of IBM violated the implied duty of good faith and fair dealing in the Contracts, by among other things, depriving Avantor of the benefits of its bargain under the Contracts.

121. As a result of IBM's breaches, Avantor has been damaged, and continues to be damaged.

WHEREFORE, Avantor demands judgment against IBM, on the Sixth Count of the Complaint, for:

(a) direct damages in an amount to be determined at trial;

(b) indirect damages in an amount to be determined at trial;

(c) pre-judgment interest;

(d) post-judgment interest;

(e) court costs incurred by Avantor in prosecuting this action; and

(f) such other and further relief that the Court deems just.

Dated: November 8, 2012

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Avantor Performance Materials, Inc.

LOCAL CIVIL RULE 11.2 CERTIFICATION

I hereby certify that the matter in controversy is not the subject of another civil action pending in this Court. I further certify that the matter in controversy is not the subject of any pending arbitration or administrative proceeding.

Dated: November 8, 2012 By: /s/ David L. Harris